

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(Turrell and Wilson, Arkansas)

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To: Chief, Policy & Rules Division  
Mass Media Bureau

**AMENDED AND RESTATED  
PETITION FOR RULE MAKING**

Pollack Broadcasting Company ("Pollack") is the permittee of FM radio broadcast station KAFW, Channel 234A, Wilson, Arkansas.<sup>1</sup> Pollack, by its attorneys, hereby petitions for a change in the FM Table of Allotments, Section 73.202(b) of the Commission's Rules,<sup>2</sup> to reallocate Channel 234A from Wilson to Turrell, Arkansas, as the community's first local aural transmission service, and for modification of the permit for station KAFW accordingly.

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<sup>1</sup> Pollack has pending before the Commission an application (File No. BMPH-951103IC) for modification of the KAFW construction permit to specify operation on Channel 234A. Channel 234A was substituted for Channel 279A in the Wilson allotment by *Earle, Pocahontas and Wilson, Arkansas*, 10 FCC Rcd 8270 (Alloc. Br. 1995).

<sup>2</sup> 47 CFR § 73.202(b).

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This petition supersedes the petition for rule making filed by Pollack on December 6, 1995 to amend the FM Table of Allotments with regard to Turrell and Wilson, Arkansas.

Pollack requests modification of the authorization for station KAFW(FM) to specify Turrell, Arkansas, as its community of license pursuant to Section 1.420(i) of the Commission's Rules.<sup>3</sup> This rule authorizes the Commission to modify the permit or license of an FM station to specify a new community of license, by rule making, where the amended allotment would be mutually exclusive with the station's present assignment.

A technical statement in support of this petition is attached hereto. The technical statement contains a separation study for the proposed allotment. The study indicates that the amended allotment would be short spaced to both the existing Wilson allotment as well as to the pending modification application for KAFW. Thus, this petition qualifies for the application of Section 1.420(i).

#### **Requirements for Community of License**

The separation study in the technical statement also demonstrates that the proposed change in the community of license of KAFW complies with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. The proposed geographic coordinates for the allotment in Turrell are 30° 22' 36" North, 90° 15' 12" West.

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<sup>3</sup> 47 CFR § 1.420(i).

Indicia of community status determine whether a locality has the political and demographic characteristics needed for a community of license. These include such factors as (a) incorporation, (b) political, social or business organizations, and (c) the local provision of municipal services. *See, e.g., Trade, Tennessee and Beech Mountain, North Carolina*, 6 FCC Rcd 5835 (Alloc. Br. 1991); *Essex, New York*, 4 FCC Rcd 5775 (Alloc. Br. 1989).

The population of Turrell is approximately one thousand.<sup>4</sup> Turrell is located in eastern Arkansas, approximately 18 miles southwest of Wilson. Turrell is an incorporated municipality with an elected mayor. In addition, it has its own police department and water department. It has two grocery stores and four churches.

Accordingly, Turrell satisfies the technical, political and demographic criteria for finding that the city qualifies as a community of license for a radio station.

#### **Preferential Arrangement of Allotments**

The proposed change will result in a preferential arrangement of allotments pursuant to Section 307(b) of the Communications Act of 1934, as amended, as defined in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("1982 Revision"), and *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("1989 Modification"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("1990 Reconsideration").

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<sup>4</sup> The 1990 Census, U.S. Dept. of Commerce, reported Turrell's population as 988.

The Commission is given statutory direction to distribute licenses "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."<sup>5</sup>

In carrying out this responsibility, "the Commission assesses whether the proposed allotment plan would lead to a preferred distribution of allotments by examining the facilities available in the existing and proposed communities and the relative population of the communities." *Parker and Port St. Joe, Florida* (MM Docket No. 95-32), 11 FCC Rcd \_\_\_, ¶ 4 (Alloc. Br., released Jan. 30, 1996). The relative populations of the areas served is also considered; comparative merit is recognized in proposals that increase the number of persons served by an allotment. *Saltville, Virginia and Jefferson, North Carolina*, 10 FCC Rcd 7578, 7580 ¶ 9 (Alloc. Br. 1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657, 8657 ¶ 2 (Alloc. Br. 1993)

The Commission's FM allotment priorities are (1) first aural service, (2) second aural service, (3) first local (i.e., transmission) service, and (4) other public interest matters. Equivalent weight is given to priorities (2) and (3). *See 1982 Revision*, 90 FCC 2d at 92; *1989 Modification*, 4 FCC Rcd at 4873 & n.8.

In adopting Section 1.420(i) of the Commission's Rules in the 1989 Modification, the Commission discussed the application of its rules and policies for

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<sup>5</sup> 47 USC § 307(b).

change of community of license, including the FM allotment priorities. In that discussion it stated:

We believe it is best to take into account *the totality of the service improvements* resulting from a proposed change in community of license when determining whether an allotment proposal should be approved. Therefore, [where a licensee proposes to change its transmitter site and community of license], we will decide the proposal on a case by case basis, based on whether or not the proposed changes, *taken as a whole*, would advance our allotment priorities.

*1989 Modification*, 4 FCC Rcd at 4874 (footnote omitted; emphasis added).

In addition, the Commission expressly acknowledged in the 1990 Reconsideration that AM and FM services should be *jointly* considered in applying the allotment priorities to a particular proposal. In a discussion under the heading "Relevant Stations for Comparative Analysis," the Commission stated:

Because AM and FM stations are considered to be joint components of a single aural medium . . . , in a proceeding to change the community of license of an FM Station, we will examine the availability of FM and AM services.

5 FCC Rcd at 7097.

In the 1990 Reconsideration, the Commission discussed the application of the FM allotment priorities to unbuilt construction permits. Interpreting the near prohibition on removal of an existing service, the Commission explained that that policy is grounded in the public's "legitimate expectation that existing service will continue." 5 FCC Rcd at 7097 ¶ 19. "From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set."

*Id.* The Commission emphasized that a permit for an unconstructed station receives a categorically lower preference than an existing service.

For example, in *Pawley's Island*, the difference in priority was explained thus:

While we consider important the potential service that unbuilt stations represent, we acknowledge that they are not a service on which the public has come to rely. Therefore, we do not consider their removal from a community to represent the same concerns with loss of service that removal of an operating station would represent.

8 FCC Rcd at 8657. See also *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992). Consequently, the showing necessary to justify reallocation of a permit is lower than that for a station that is on the air.

### **Discussion**

The instant petition is one part of a two-part proposal to increase the fairness, efficiency and equity of the distribution of radio services in northeastern Arkansas. As licensee of AM radio broadcast station KOSE, Pollack filed on February 23, 1996 an application to change the community of license of KOSE(AM) from Osceola to Wilson. This application has been assigned FCC File No. BP-960223AB. This is the second part of Pollack's reallocation proposal. Thus Pollack's proposal, taken as a whole, will provide Turrell with its first local transmission service while giving Wilson its own local transmission service as well.

A map accompanying the attached technical statement indicates that Wilson is within the 5 mV/m contour of KOSE(AM). Because no change will be required

for the present facilities of KOSE(AM) to serve Wilson, Pollack will apply for the new license in Wilson as soon as the construction permit is issued.

Grant of the application to change the community of license of KOSE(AM) will immediately give Wilson local service of its own in the form of station KOSE(AM), which is already on the air, whereas otherwise Wilson would have to wait a few months for the construction of KAFW(FM).<sup>6</sup> Osceola is currently served by KOSE-FM<sup>7</sup> and KOSE(AM); KOSE-FM will continue to provide local service to Osceola. Thus, these proposed changes will preserve local transmission service in Osceola and hasten local service for Wilson, while providing a first such service for Turrell.

Pollack does not seek preference for its proposal under either of the Commission's first two FM allotment priorities. However, provision of the first local transmission service to Turrell qualifies for preference under priority (3). Loss of Osceola's second transmission service comes under priority (4), and thus is less significant than the preference for providing Turrell's first service.

Furthermore, in light of the Commission's distinction between existing service and an unconstructed permit, some additional credit should be recognized for the

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<sup>6</sup> Construction of KAFW in Turrell is expected to proceed quickly, however, as soon as the permit is modified as requested. Consistent with the foregoing, Pollack is amending its pending application for modification of its permit for Channel 234A, in order to avoid delay in effectuating the reallocation of the channel to Turrell as requested herein.

<sup>7</sup> Pollack is the licensee of station KOSE-FM, Osceola, Arkansas (formerly known as KAFW).

immediate provision of local service to Wilson. In addition, the proposed reallocation of KAFW, an unbuilt construction permit, does not invoke the Commission's restrictions on reallocation of existing services.

The populations of Turrell and of Wilson are each approximately 1000, so no difference in allocation priorities flows from the respective size of the communities. However, the Technical Statement indicates that KAFW serving Turrell will provide service to 87,700 people.<sup>8</sup> This is nearly three times the population that would be served by KAFW in Wilson. The improved service that KAFW can provide from Turrell greatly enhances the overall priority of Pollack's proposal.

The other requirements for reallocation of KAFW to Turrell are also satisfied here. Neither Turrell nor Wilson is part of an Urbanized Area. Finally, Pollack did not acquire its permit for KAFW(FM) in a comparative hearing, much less a hearing in which Section 307(b) would have been a factor.

Consequently, considering the totality of the service improvements, the Commission's rules and policies give strong priority to the two-part proposal submitted by Pollack. The changes presented in this petition and the application for change in community of license of KOSE(AM), which is integral to this petition, will establish a fairer, more efficient and more equitable distribution of radio service among the communities of Turrell, Wilson and Osceola, Arkansas.

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<sup>8</sup> This is based on the 1990 U.S. Census and a facility operating at 6 kW effective radiated power and 100 m height above average terrain.




Accordingly, Pollack hereby requests that the Commission issue, pursuant to notice and comment, a report and order modifying the FM Table of Allotments so as to change KAFW's community of license from Wilson, Arkansas, to Turrell, Arkansas, in accordance with the following table:

	<u>Present</u>	<u>Proposed</u>
Wilson, Arkansas	234A	[KOSE(AM)]
Turrell, Arkansas		234A
Osceola, Arkansas	297A	297A

Respectfully submitted,

POLLACK BROADCASTING  
COMPANY

By:   
Barry D. Wood  
Mark A. Brinton

JONES, WALDO, HOLBROOK  
& McDONOUGH  
Suite 900  
2300 M Street, N.W.  
Washington, DC 20037-1436  
(202) 296-5950

Its Attorneys

April 11, 1996

TECHNICAL STATEMENT  
IN SUPPORT OF PETITION FOR RULE MAKING  
POLLACK BROADCASTING COMPANY, INC.  
TURRELL, ARKANSAS

This Technical Statement was prepared on behalf of Pollack Broadcasting Company, Inc., permittee of KAFW(FM), Wilson, Arkansas, in support of a Petition for Rule Making to change the city of license of KAFW(FM) to Turrell, Arkansas.

The petitioner proposes that Channel 234A be allotted to Turrell instead of Wilson. To maintain local service to Wilson, the petitioner proposes to change the city of license of its AM broadcast station KOSE from Osceola, Arkansas to Wilson.

Pursuant to Section 73.203 of the FCC Rules, the reference geographic coordinates for Turrell were extracted from the National Atlas of the United States of America, and are proposed as the reference coordinates for the allotment.

Table I - Reference Coordinates for Turrell	
Turrell, Arkansas	35°22'36"N 90°15'12"W

A separation study prepared utilizing the above listed reference coordinates indicates that the proposed allotment meets the separation requirements of Section 73.207 of the

Turrell, Arkansas

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FCC rules with respect to all existing or proposed allotments and assignments. Table II below summarizes the separation study prepared with respect to all pertinent allotments and assignments:

<b>Table II - Separation Study for Proposed Turrell</b>								
Call Status	City State	FCC File No.	Channel Freq.	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)	
WOGYFM LIC	Germantown TN	BLH9211112KB	231C2 94.1	34-59-22 89-51-45	140.4	55.80 .80	55	CLOSE
WLSQFM LIC	Dyer TN	BLH950127KE	232A 94.3	36-06-12 89-07-45	51.1	129.79 98.79	31	CLEAR
KJIWFM APP	Helena AR	BPH950914ID	233C3 94.5	34-31-28 90-35-47	198.4	99.61 10.61	89	CLOSE
KJIWFM LIC	Helena AR	BLH900226KF	233A 94.5	34-30-52 90-38-18	200.2	101.92 29.92	72	CLEAR
ALLOT	Helena AR		233C3 94.5	34-31-28 90-40-19	202.0	101.99 12.99	89	CLOSE
KKLR LIC	Poplar Bluff MO	BLH890907KC	233C1 94.5	36-45-46 90-26-03	354.0	154.67 21.67	133	CLEAR
KAFW APP	Wilson AR	BMPH951103IC	234A 94.7	35-29-45 90-10-48	26.6	14.81 -100.19	115	SHORT
<i>(Petitioner's pending modification application.)</i>								
ALLOT	Wilson AR	Docket 93-259	234A 94.7	35-29-46 90-10-04	30.2	15.37 -99.63	115	SHORT
<i>(Existing Wilson allotment.)</i>								
WOJG LIC	Bolivar TN	BLH920807KB	234A 94.7	35-16-39 88-55-41	94.9	121.01 6.01	115	CLOSE
WHLE CPM	Byhalia MS	BMPH940823IA	235A 94.9	34-55-30 89-40-58	133.9	72.22 .22	72	CLOSE
WHLE APP	Byhalia MS	BMPH951208IF	235A 94.9	34-55-30 89-40-57	133.9	72.24 .24	72	CLOSE
WTRBFM LIC	Ripley TN	BLH921214KA	235A 94.9	35-48-47 89-28-26	55.2	85.65 13.65	72	CLOSE
WVIMFM LIC	Coldwater MS	BLH7833	237A 95.3	34-46-42 89-58-23	158.9	71.14 40.14	31	CLEAR

It is also evident from the above study, that the proposed Turrell allotment is mutually-exclusive with the existing Channel 234A allotment at Wilson.

Calculations of the potential 60 dBu coverage of the Turrell allotment have been prepared. Based on the 1990 Census, a hypothetical facility, operating with 6 kW

Turrell, Arkansas

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effective radiated power and 100 m height above average terrain, would provide service to 87,700 inhabitants.\* This is an increase of 57,300 persons over the maximum Class A facility proposed for Wilson in BMPH-951103IC.

KOSE(AM) is licensed for operation on 860 kHz with a nominal power of 1 kW during daytime hours. With respect to the proposal to change the KOSE(AM) city of license to Wilson, Figure 1 herein is a map demonstrating that the presently licensed KOSE(AM) 5 mV/m contour encompasses the city limits of Wilson in compliance with Section 73.24(i) of the FCC Rules.

*Louis Robert du Treil, Jr.*

Louis Robert du Treil, Jr.

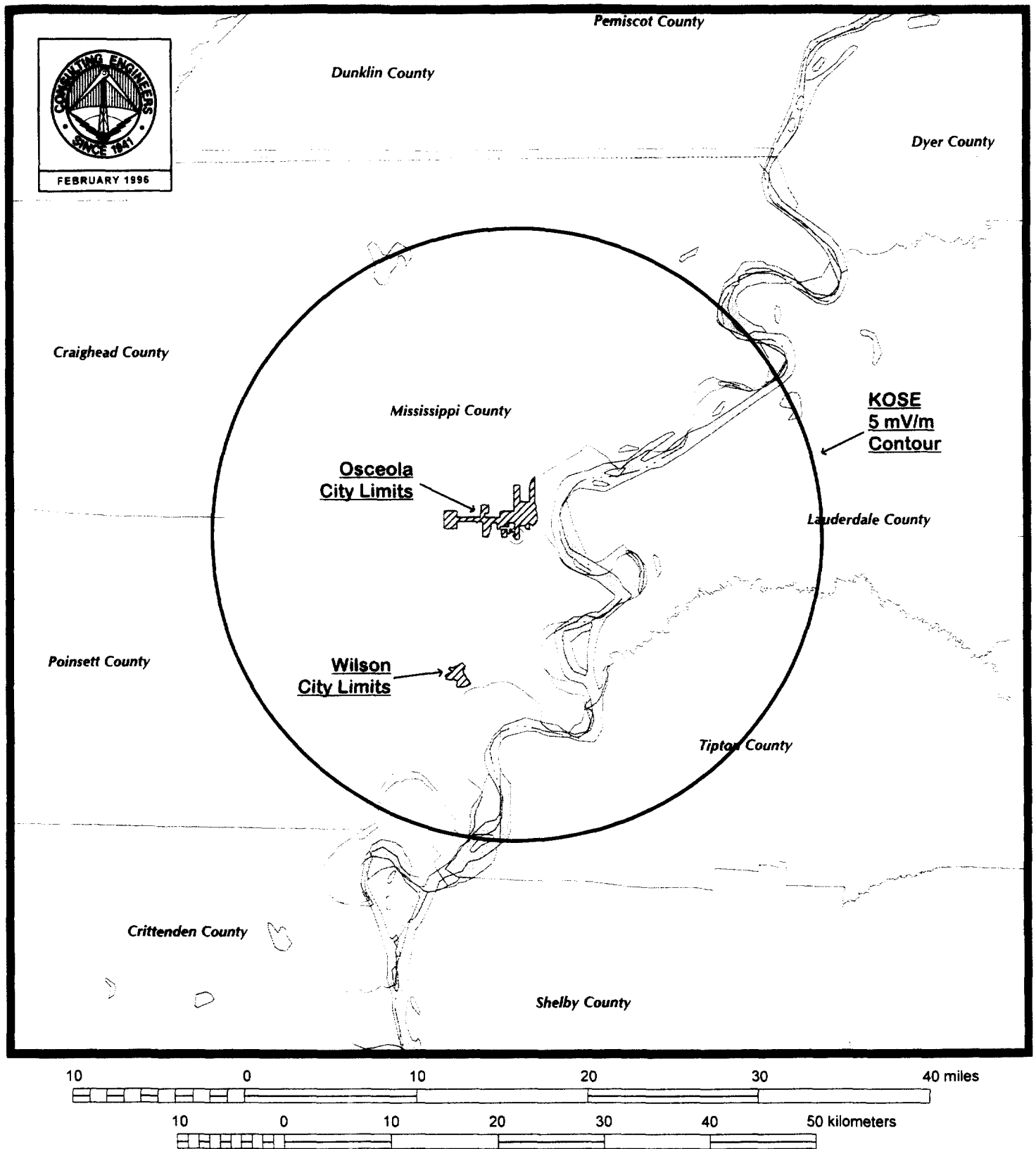
du Treil, Lundin & Rackley, Inc.  
240 N. Washington Blvd., Suite 700  
Sarasota, FL 34236  
(941) 366-2611

February 2, 1996

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\* The area within the predicted 60 dBu contour for the hypothetical facility is 2,515 square kilometers.

Figure 1



**PREDICTED KOSE(AM) 5 MV/M COVERAGE OF WILSON**  
**POLLACK BROADCASTING COMPANY, INC.**  
**TURRELL, ARKANSAS**

du Treil, Lundin & Rackley, Inc. Sarasota, Florida